

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
AMERICAN HOME MORTGAGE HOLDINGS,	)	
INC., a Delaware corporation, <i>et al.</i> ,	)	Case No. 07-11047 (CSS)
	)	
Debtors,	)	Jointly Administered
	)	

---

**DESIGNATION OF THE RECORD AND STATEMENT OF ISSUES  
ON APPEAL BY APPELLANT DBSP**

Pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, DB Structured Products, Inc. ("DBSP"), by and through its undersigned counsel, hereby designates the following items for inclusion in the record on appeal and states the issues to be presented on appeal from the Bankruptcy Court's October 30, 2007 *Order (A) Approving (i) The Sale Of The Debtors' Mortgage Servicing Business Free And Clear Of Liens, Claims And Interests, (ii) The Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases Related Thereto, And (B) Granting Certain Related Relief* [Doc. No. 1711].

**I. Designation of Record on Appeal**

DBSP designates the following record items from Bankr. D. Del., Case No. 07-11047-

CSS:

<b>Date</b>	<b>Docket No.<sup>1</sup></b>	<b>Record Items</b>
08/06/2007	11	Emergency Motion of the Debtors for Orders: (A)(I) Approving Sale Procedures; (II) Scheduling a Hearing to Consider Sale of Certain Assets Used in the Debtors Loan Servicing Business; (III) Approving Form and Manner of Notice Thereof; and (IV) Granting Related Relief; and (B)(I) Authorizing the Sale of Such Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (II) Authorizing and Approving Purchase Agreement Thereto; (III) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto; and (IV) Granting Related Relief
08/08/2007	90	Certification of Counsel Regarding Order Approving (I) Sale Procedures; (II) Scheduling a Hearing to Consider Sale of Certain Assets Used in the Debtors' Loan Servicing Business; (III) Approving Form and Manner of Notice Thereof; and (IV) Granting Related Relief
08/09/2007	98	Amended Certification of Counsel Regarding Order Approving (I) Sale Procedures; (II) Scheduling a Hearing to Consider Sale of Certain Assets Used in the Debtors' Loan Servicing Business; (III) Approving Form and Manner of Notice Thereof; and (IV) Granting Related Relief
08/09/2007	113	Order Approving (I) Sale Procedures; (II) Scheduling a Hearing to Consider Sale of Certain Assets Used in the Debtors' Loan Servicing Business; (III) Approving Form and Manner of Notice Thereof; and (iv) Granting Related Relief
08/27/2007	403	Notice of (I) Possible Assumption and Assignment of Certain Leases, License Agreements, and Executory Contracts; and (II) Proposed Cure Obligations, If Any
09/10/2007	674	Modified Notice of (I) Possible Assumption and Assignment of Certain Leases, License Agreements, and Executory Contracts and (II) Proposed Cure obligations, If Any

<sup>1</sup> The designation of a docket item is intended to include all exhibits and/or attachments thereto.

Date	Docket No. <sup>1</sup>	Record Items
09/10/2007	675	<p>Objection of DB Structured Products, Inc. to Emergency Motion of the Debtors for Orders: (A)(I) Approving Sale Procedures; (II) Scheduling a Hearing to Consider Sale of Certain Assets Used in the Debtors Loan Servicing Business; (III) Approving Form and Manner of Notice Thereof; and (IV) Granting Related Relief; and (B)(I) Authorizing the Sale of Such Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto; (III) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto; and (IV) Granting Related Relief</p>
09/12/2007	716	<p>Limited Objection [of Fannie Mae] to the Emergency Motion Of The Debtors For Orders: (A)(I) Approving Sale Procedures; (II) Scheduling A Hearing To Consider Sale Of Certain Assets Used In The Debtors' Loan Servicing Business; (III) Approving Form And Manner Of Notice Thereof; and (IV) Granting Related Relief; and (B)(I) Authorizing The Sale Of Such Assets Free And Clear Of Liens, Claims, Encumbrances, And Other Interests; (II) Authorizing And Approving Purchase Agreement Thereto; (III) Approving The Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases Related Thereto; And (IV) Granting Related Relief</p>
09/21/2007	865	<p>Motion of the Debtors for Order Pursuant to Sections 105(a), 363, 364, 365, and 503(b) of the Bankruptcy Code and Rules 2002, 4001, 6004, 6006, 7062, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (A) Approving Revised Procedures for the Sale of the Debtors' Mortgage Servicing Business; (B) Approving Certain Protections for the Stalking Horse Bidder in Such Sale; (C) Directing that Certain Notices of Such Sale and Deadlines be Given; and (D) Authorizing, on an Interim Basis, the Debtors to Grant Certain Liens and Other Protections for the Purchaser's Collateral Effective After the Initial Closing</p>

<b>Date</b>	<b>Docket No.<sup>1</sup></b>	<b>Record Items</b>
09/21/2007	893	Limited Objection of Federal Home Loan Mortgage Corporation to Emergency Motion of the Debtors for an Order (I) Authorizing the Sale of Such Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (II) Authorizing and Approving Purchase Agreement Thereto; (III) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto; and (IV) Granting Related Relief and to the Modified Notice of (I) Possible Assumption and Assignment of Certain Leases, License Agreements, and Executory Contracts; and (II) Proposed Cure Obligations, If Any
9/25/2007	931	Notice of Filing of Executed Asset Purchase Agreement
09/25/2007	937	Order Pursuant to Sections 105(a), 363, 364, 365, and 503(b) of the Bankruptcy Code and Rules 2002, 4001, 6004, 6006, 7062, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (A) Approving Revised Procedures for the Sale of the Debtors' Mortgage Servicing Business; (B) Approving Certain Protections for the Stalking Horse Bidder in Such Sale; (C) Directing That Certain Notices of Such Sale and Deadline be Given; and (D) Authorizing, on an Interim Basis, the Debtors to Grant Certain Liens and Other Protections for the Purchaser's Collateral Effective After the Initial Closing
09/27/2007	979	Notice of Contracts Excluded from (I) Possible Assumption and Assignment of Certain Leases, License Agreements, and Executory Contracts; and (II) Proposed Cure Obligations, If Any
10/02/2007	1045	Order Granting Leave to File Reply to the Objections to Emergency Motion of the Debtors for Orders: (A)(I) Approving Sale Procedures; (II) Scheduling a Hearing to Consider Sale of Certain Assets Used in the Debtors' Loan Servicing Business; (III) Approving Form and Manner of Notice Thereof; and (IV) Granting Related Relief; and (B)(I) Authorizing the Sale of Such Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (II) Authorizing and Approving Purchase Agreement Thereto; (III) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto; and (IV) Granting Related Relief

<b>Date</b>	<b>Docket No.<sup>1</sup></b>	<b>Record Items</b>
10/02/2007	1108	Supplemental Objection of DB Structured Products, Inc. to Emergency Motion of the Debtors for Orders: (A)(I) Approving Sale Procedures; (II) Scheduling a Hearing to Consider Sale of Certain Assets Used in the Debtors' Loan Servicing Business; (III) Approving Form and Manner of Notice Thereof; and (IV) Granting Related Relief; and (B)(I) Authorizing the Sale of Such Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto; (III) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto; and (IV) Granting Related Relief
10/10/2007	1443	Debtors' Omnibus Response to Certain Objections to the Sale of Certain Assets and the Assumption and Assignment of Executory Contracts Relating to the Debtors' Loan Servicing Business
10/14/2007	1533	Reply of DB Structured Products, Inc. to Debtors' Omnibus Response to Certain Objections to the Sale of Certain Assets and the Assumption and Assignment of Executory Contracts Relating to the Debtors' Loan Servicing Business
10/14/2007	1538	Certification of Counsel Regarding Stipulation and Agreement by and between the Debtors, AH Mortgage Acquisition Co., Inc., and Fannie Mae
10/15/2007	1544	Order Granting Supplemental Stipulation and Agreement between the Debtors, AH Mortgage Acquisition Co., Inc. and Fannie Mae
10/15/2007	1546	Second Notice of Contracts Excluded from (I) Possible Assumption and Assignment of Certain Leases, License Agreements, and Executory Contracts; and (II) Proposed Cure Obligations, If Any
10/18/2007	1613	Third Notice of Contracts Excluded from (I) Possible Assumption and Assignment of Certain Leases, License Agreements, and Executory Contracts; and (II) Proposed Cure Obligations, If Any
10/24/2007	1658	Notice of Filing of Proposed Order Approving Sale of Debtors' Servicing Business to AH Mortgage Acquisition Co., Inc.
10/29/2007	1702	Certification of Counsel Regarding Order Approving Sale of Debtors' Servicing Business to AH Mortgage Acquisition Co., Inc.



<b>Date</b>	<b>Docket No.<sup>1</sup></b>	<b>Record Items</b>
10/30/2007	1711	Order Pursuant to Sections 105, 363, 364, 365, and 503(b) of the Bankruptcy Code, and Rules 2002, 4001, 6004, 6006, 7062, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (A) Approving (i) The Sale of the Debtors' Mortgage Servicing Business Free and Clear of Liens, Claims and Interests, (ii) The Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto, and (B) Granting Certain Related Relief
10/30/2007	1713	Emergency Motion of DB Structured Products, Inc. for Limited Stay Pending Appeal
10/30/2007	1715	Expedited Motion to Shorten Notice and for Emergency Hearing on Emergency Motion of DB Structured Products, Inc. for Limited Stay Pending Appeal
10/30/2007	1720	Order Granting Expedited Motion to Shorten Notice and for Emergency Hearing on Emergency Motion of DB Structured Products, Inc. for Limited Stay Pending Appeal
10/30/2007	1721	Notice of Motion and Hearing
11/05/2007	1778	Motion and Joinder of UBS Real Estate Securities Inc. to Emergency Motion of DB Structured Products, Inc. for Limited Stay Pending Appeal
11/05/2007	1783	Debtors' Opposition to the Emergency Motion of DB Structured Products, Inc. for Limited Stay Pending Appeal
11/05/2007	1786	Objection of Bank of America, N.A., as Administrative Agent, to the Emergency Motion of DB Structured Products, Inc. for Limited Stay Pending Appeal
11/05/2007	1790	Joinder of the Official Committee of Unsecured Creditors to the Debtors' Opposition to the Emergency Motion of DB Structured Products, Inc. for Limited Stay Pending Appeal
11/06/2007	1799	Notice of Appeal
11/06/2007	1830	Notice of Withdrawal of Emergency Motion of DB Structured Products, Inc. for Limited Stay Pending Appeal
11/13/2007	1986	Certification of Counsel Regarding Debtors' Entry into Second Amendment to Asset Purchase Agreement
11/14/2007	1996	Order Approving Debtors' Entry Into Second Amendment to Asset Purchase Agreement

DBSP designates the following record items from items submitted as Exhibits by DBSP at the hearing held on October 15 through October 19, 2007 in Bankr. D. Del., Case No. 07-11047-CSS:

Document Date	Exhibit No.	Document Description
05/01/2006	DBSP-1	Master Mortgage Loan Purchase and Servicing Agreement among American Home Mortgage Corp., American Home Mortgage Servicing, Inc., and DB Structured Products, Inc.
07/26/2007	DBSP-4	Letter to American Home Mortgage Corp. and American Home Mortgage Servicing, Inc. from James D. Campbell, Director and Michael J. Schoffelen of DB Structured Products, Inc. re: Notice of Payment Default
09/26/2006	DBSP-5	Assignment, Assumption and Recognition Agreements among DB Structured Products, Inc., Deutsche Alt-A Securities, Inc. and American Home Mortgage
11/01/2005	DBSP-6	Master Mortgage Loan Purchase and Interim Servicing Agreement among American Home Mortgage Corp., American Home Mortgage Servicing, Inc. and DB Structured products, Inc.
05/03/2006	DBSP-7	Email from Kathryn Allen of Thacher Proffitt & Wood to Jody Gallegos and copies to Ali S. Shujaat, David Friedman, Robert Love, Marissa Morelle, Carlo Colagiacomo, Peter Principato and Salvatore Franco re: AHM-DB Retained MLSPA-Rolling Three-Month Delinquency Rate Language and enclosing revised agreement and blackline
05/01/2006	DBSP-8	Blackline Master Mortgage Loan Purchase and Servicing Agreement among American Home Mortgage Corp., American Home Mortgage Servicing, Inc. and DB Structured Products, Inc.
03/01/2006	DBSP-9	Purchase, Warranties and Servicing Agreement among EMC Mortgage Corporation, American Home Mortgage Corp. and American Home Mortgage Servicing, Inc.
05/01/2006	DBSP-10	Master Mortgage Loan Purchase and Servicing Agreement among American Home Mortgage Corp., American Home Mortgage Servicing, Inc. and Greenwich Capital Financial Products, Inc.

DBSP designates the following record items from items submitted as Exhibits by the Debtors at the hearing held on October 15 through October 19, 2007 in Bankr. D. Del., Case No. 07-11047-CSS:

<b>Document Date</b>	<b>Exhibit No.</b>	<b>Document Description</b>
5/01/2006	Debtors-35	Master Mortgage Loan Purchase and Servicing Agreement dated as of May 1, 2006, by and among American Home Mortgage Corp. (Seller), American Home Mortgage Servicing, Inc. (Servicer) and DB Structured Products, Inc. (Initial Purchaser)
10/12/2007	Debtors-106	Fannie Mae Letter

DBSP designates the following record items of transcripts from hearings held in Bankr. D. Del., Case No. 07-11047-CSS:

<b>Hearing Date</b>	<b>Docket No.</b>	<b>Document Description</b>
10/15/2007	1643	Transcript of Hearing on Debtors' Sale Motion
10/16/2007	1632	Transcript of Hearing on Debtors' Sale Motion
10/17/2007	Not available	Transcript of Hearing on Debtors' Sale Motion
10/18/2007	1662	Transcript of Hearing on Debtors' Sale Motion
10/19/2007	1663	Transcript of Hearing on Debtors' Sale Motion
10/23/2007	1664	Transcript of Hearing containing Judge Sontchi's Oral Ruling on Debtors' Sale Motion
10/25/2007	1793	Transcript of Hearing on Proposed Order Approving Debtors' Sale Motion
11/09/2007	2064	Transcript of Hearing on UBS's Motion/Joinder to Limited Stay Pending Appeal

## **II. Statement of Issues on Appeal**

- Whether the Court erred in finding that the Master Mortgage Loan Purchase and Servicing Agreement between the Debtors and DBSP dated as of May 1, 2006 (the "MLPSA") could be sold by the Debtors pursuant to section 363 of the Bankruptcy Code notwithstanding the provisions of the agreement that condition the Debtors' ability to assign the MLPSA on the approval of DBSP (MLPSA §§ 13.04 & 13.05).



2. Whether the Court erred in finding that the MLPSA could be sold by the Debtors pursuant to section 363 of the Bankruptcy Code without the need for the buyer to comply with the provisions of the agreement requiring that the “Servicer” under the MLPSA meet the qualifications of a FNMA [“Fannie Mae”] and a FHLMC [“Freddie Mac”] servicer (MLPSA §§ 7.02(v) & 14.01(vi)).
3. Whether the Court erred in finding that the MLPSA could be sold by the Debtors pursuant to section 363 of the Bankruptcy Code without the need for the buyer to comply with the provisions of the MLPSA that require the Servicer to remit to DBSP any payment required to be made under the terms of the MLPSA (MLPSA § 14.01(i)).
4. Whether the Court erred in finding that the indemnity provision of the MLPSA (MLPSA § 13.01) and the payment waterfall provisions of the MLPSA (MLPSA §§ 11.09(ii) & (vi)) were unenforceable cross-default provisions that could not be enforced by DBSP.
5. Whether the Court erred in finding that otherwise enforceable contractual restrictions upon assignment are unenforceable in bankruptcy pursuant to section 363(l) of the Bankruptcy Code.
6. Whether the Court erred in determining that the servicing provisions of the MLPSA constituted a separate, independent agreement that could be severed from the remainder of the MLPSA and sold separately by the Debtors.
7. Whether the Court erred in finding that the Debtors had satisfied section 363(f) of the Bankruptcy Code with respect to the Debtors’ sale of the servicing provisions contained in the MLPSA, so as to allow the Debtors to sell the MLPSA free and clear of any claims of DBSP thereunder.

Dated: November 16, 2007

**ASHBY & GEDDES, P.A.**



William P. Bowden (I.D. #2553)  
Don A. Beskrone (I.D. #4380)  
Gregory A. Taylor (I.D. #4008)  
Amanda M. Winfree (I.D. #4615)  
500 Delaware Avenue, 8th Floor  
P.O. Box 1150  
Wilmington, Delaware 19899  
(302) 654-1888

- and -

**BINGHAM McCUTCHEN LLP**

Steven Wilamowsky  
399 Park Avenue  
New York, NY 10022  
(212) 705-7000

**BINGHAM McCUTCHEN LLP**

Andrew J. Gallo  
150 Federal Street  
Boston, MA 02110  
(617) 951-8000  
*Counsel to DB Structured Products, Inc.*

185953.1